

February 7, 2007

Mark Holsten, Commissioner  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4040

Re: *In the Matter of the Trespass Citation Issued to Jason Dwight Murray, Citation No. 52238;*  
OAH Docket No. 3-2000-17760-2

Dear Commissioner Holsten:

The above-entitled matter came on for a prehearing telephone conference call at 2:00 p.m. on January 29, 2007. The Administrative Law Judge, Conservation Officer Joel Heyn, and Jason Murray participated in the telephone conference. All participants agreed that no formal hearing would be needed and that the ALJ could decide the matter based on the record created during the telephone conference.

The facts are as follows. On December 9, 2006, Mr. Murray was goose hunting with friends on property in Empire Township in Dakota County. They were hunting on tracks and ditches owned by a railroad. This section of the railroad track runs through agricultural fields on both sides. From the railroad tracks, Mr. Murray shot at geese located in the agricultural fields. Although the railroad does not object to hunting on its property, the owner of the agricultural land through which the tracks run had previously complained about hunters shooting into the fields from the tracks. Conservation Officer Heyn observed Mr. Murray shooting into the agricultural fields and issued a civil trespass citation to Mr. Murray. Mr. Murray had taken two geese at the time the citation was issued.

Minn. Stat. § 97B.001, subd. 2, provides that a person may not enter agricultural land for outdoor recreation purposes without first obtaining permission of the owner, occupant, or lessee. The statute further prohibits a person from taking a wild animal on any land where the person is prohibited from entering. See Minn. Stat. § 97B.001, subd. 7.

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Mr. Murray does not dispute the accuracy of the facts described above. He appealed the citation because he was uncertain as to what legal authority prohibited him from shooting into agricultural fields. When the legal authority cited above was explained to him, he indicated that he now understood the basis for the citation.

Mr. Murray took a wild animal on land he was prohibited from entering without the owner's consent. Accordingly, I recommend that citation number 52238 be affirmed. I am closing our file in this matter and returning the record to you.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner must wait at least five days after receipt of this recommendation before making a final decision. Within those five days, the person to whom the order is issued may comment on this recommendation. The Commissioner must send a copy of the final decision to Mr. Murray. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

Encl.

cc: Conservation Officer Joel Heyn  
Jason Dwight Murray